

CHAPTER 211

LOSS AND DAMAGE CLAIMS PROCEDURES

A. PURPOSE

This chapter provides policies, procedures, and requirements to develop factual evidence to support freight loss and damage claims against commercial carriers for in transit loss or damage to DOD property. This chapter cancels AFR 177-19/AR 735-11-1/NAVSUPINST 4610.34E/MCO P4610.16E/DLAR 4500.12, Uniform Settlement of Military Freight Loss and Damage Claims.

B. GENERAL

1. Chapter 210 requires transportation personnel to report transportation-type discrepancies for shipments received by DOD activities when transported by a commercial carrier. The TO must notify the carrier of a discrepancy in shipment.
2. 49 USC 11706, Liability of Rail Carriers Under Receipts and Bills of Lading and 14706, Liability of Carriers Under Receipts and Bills of Lading provides that a shipper who suffers damage to property during transportation in interstate commerce will be compensated for "... the actual loss, damage, or injury to such property caused by ... the common carrier." Each Service has a claims office with final resolution authority to file claims against the carrier.
3. To ensure the recovery of monies due the DOD from commercial carriers who lose or damage freight, claims offices provide experienced claims professionals and act as the central point for DOD freight loss and damage claims.
4. The TO is responsible for reporting transportation-type discrepancies. The TO must have knowledge of and familiarity with the rules and regulations governing shipments by commercial carriers to make an investigation and place responsibility for property loss or damage. The TO is encouraged to discuss the discrepancy with the carrier's local agent. This may bring out facts helpful in developing the discrepancy and document potential issues while evidence is readily available. This may help later to resolve, clarify, or dispute a carrier inquiry or protest. The TO must not discuss carrier liability during conferences with carrier agents. Discussion of liability with the carrier is reserved for the claims office, which establishes the claim.
5. The commanding officer at each DOD activity requires all individuals responsible for property at that activity to know whether property was lost or damaged while in transit and in the custody of a commercial carrier.
6. Internal controls must ensure that all unit activities (Supply, Maintenance, or Distribution) work in conjunction with the TO to provide valid data for use when reporting transportation discrepancies. Controls must also ensure that discrepancies are investigated and reported to the claims office accurately, completely, and timely.

C. PROCEDURES

1. Before claim action can be initiated, the TO must complete three actions:
 - a. Initiate Report. Transportation personnel must gather facts on the time, place, and circumstances of an in transit property loss or damage.
 - b. Additional Development. Coordinate the loss or damage investigation with other offices and obtain legal or technical help as necessary.
 - c. Evaluate Responsibility. Determine who is responsible for the loss or damage.
2. Initiating Claim Action. Calculate the amount of loss or damage. Determine if the carrier is responsible for the loss or damage. When the loss or damage is less than \$500, file a claim against the carrier, following the procedures outlined in Figure 211-1, Local Claim Filing Guidelines. When the loss or damage exceeds \$500, send a completely documented TDR (See Figure 210-1) to the finance center or claim office for action.

D. INVESTIGATING DISCREPANCIES

The primary purpose of discrepancy investigation is to determine responsibility for loss or damage and establish the full actual loss to the Government. The TO must conduct a full and impartial investigation of the responsibility for loss or damage. The investigation must establish such factors as proximate cause of damage, measure of loss or damage, market value (or Federal Supply Catalog or DLA Consolidated Management Data List value), preshipment repairable value, salvage allowance, depreciation, inspection by the carrier or Government, actual repair cost, and disposition of damaged property.

E. EVALUATING FACTUAL INFORMATION AND EVIDENCE

The TO determines responsibility for loss or damage based on sound and conclusive evidence compiled during the investigation and completes Block 37 of the TDR accordingly. The TO enters only factual information when describing discrepancies and clearly defines the circumstances surrounding the loss or damage in the "Remarks" (Block 43) section of the TDR. When facts are established from oral testimony, the person giving the testimony must be identified by name and position. Direct statements must be quoted.

F. SHIPPER OR CONTRACTOR RESPONSIBILITY

The TO may obtain findings of the Contract Administration Office as to shipper or contractor liability under the contract. When such responsibility is indicated, these findings are required even if carrier liability is involved. (Use the SF 364, [Figure 210-4], for reporting, adjusting, and accounting for supply-type discrepancies.)

G. DETERMINING LIABILITY

1. Common Law Rule. A common carrier is liable for the loss of, or damage to, property received for transport. The carrier can justify or excuse a default where a loss or injury occurs through:
 - a. Act of God. As defined, an event that could not happen by the intervention of man, or be prevented by human skill, knowledge, or foresight. It includes extraordinary floods, storms, unusual lightning, sudden tempests, severe frosts, earthquakes, tidal waves, and the like. An act of God, as known in law, is such unusual and extraordinary manifestation of the forces of nature that it could not, under normal conditions, be anticipated or expected. It justifies the failure of the common carrier to perform its contract of carriage and relieves it of the liability for the loss of or injury to the property. The rule, however, is not absolute. Although loss or injury to property results from an act of God, if the carrier is negligent in avoiding or lessening the loss or damage, it is liable. For example, the rule does not apply if:
 - (1) The carrier fails to obtain or ignores local reports of severe storms and brings the property into contact with the destructive force.
 - (2) The event is not the immediate or only cause of the loss or damage. As an example, the carrier takes property into an area recently struck by an earthquake, ignoring reports of unsafe roads and unstable buildings and requests to remain clear of the area. If the carrier is involved in an incident that damages the property, it is liable. The earthquake was not the immediate cause of the damage.
 - (3) A freezing condition occurs at a season of the year or in a climate where freezing weather is to be reasonably expected.
 - b. Act of the Public Enemy. Carriers are not liable for loss or damage caused by acts of organized military or naval forces of a nation at war with the US. Groups such as mobs, rioters, or strikers are not considered as the “public enemy” and losses caused by them do not fall within this exception.
 - c. Act or Mandate of a Public Authority. Common carriers are under the control of public authority to the same extent as other persons, and must equally obey the orders of properly constituted government officials. If freight is lost or damaged as a result of obedience to such orders, without any intervening fault of the carrier, the carrier will not be held responsible.
 - d. Act or Fault of the Shipper. A common carrier is not liable for any loss or injury resulting from the act or fault of the shipper without fault on the part of the carrier. This exception to the carrier’s common law liability includes every case where the loss is caused by the shipper’s act, whether that act is one of negligence, misconduct, or misfortune. The rule most frequently applies to cases of loss due to defective packing and improper loading.
 - (1) Three elements must be present to give the rule effect: the shipper performed the packing or loading; there was a defect in the packing or loading; and, the defect was concealed from ordinary observation.
 - (2) If the carrier acknowledges improper packing or loading, or if either is apparent upon ordinary observation and inspection, it is the duty of the carrier to refuse receipt of the property. If the carrier accepts the property, the carrier cannot be relieved of liability for loss or injury resulting from the defective packing or improper loading.

- e. Defects in or inherent vice of property. This exception arises from the nature and existing character of the property carried. A carrier is not liable for loss or damage to a shipment resulting from an existing defect in the property shipped and not caused or contributed to by carrier negligence. Generally, exceptions are made on perishable goods shipments subject to decay, fermentation or evaporation. Of a more complex nature, and harder to prove as to defect or inherent vice, are items of property subject at the time of shipment to metal fatigue, defective welding, structural weakness, faulty workmanship, or poor material integrity. A carrier is not an insurer against loss caused by the nature, vice, or infirmity of the property shipped. Under federal rules, when a carrier shows that the damage resulted from the inherent infirmity of goods transported under circumstances shown not to be negligent, the burden of proving negligence rests with the claimant.

H. BEGINNING OF LIABILITY

A common carrier assumes liability when it receives freight under its control; e.g., as soon as the delivery is complete and the possession of the goods is transferred from the shipper to the carrier. No formal acceptance is necessary. If a BL was not receipted, this does not necessarily indicate that the carrier did not accept the goods. Delivery cannot be complete if there is something that must be done by the shipper before the goods can be forwarded. However, if it is the carrier's responsibility to deliver the material without further shipper action, the carrier's liability has begun.

I. CARRIER'S DUTY TO PROTECT PROPERTY

A carrier's duty is not limited to the transportation of goods delivered for carriage. Law requires the carrier to protect the goods from preventable destruction and injury. The carrier must guard the goods from destruction or from the elements, the effects of delays, or other sources of damage that, by exercising care and ordinary intelligence, it could anticipate and prevent.

J. COMMON CARRIER FAULTS

1. The carrier is responsible for loss or damage, when:
 - a. A fire, wreck, or other casualty, not directly attributable to an act of God, destroys the property in its possession.
 - b. The loss or injury is attributable to a combination of an act of God and the negligence of a carrier. If the loss or damage could have been averted had the carrier acted with caution or efficiency, the carrier may not be relieved of liability. See the second example under the act of God exception.
 - c. The freight disappears while in its possession; this includes theft or pilferage.
 - d. The freight is delivered, without authority, to other than the designated consignee.
 - e. The freight is damaged through rough handling in transit, at carrier's terminals, or transfer points.
 - f. Defective or inadequate packing or loading is readily apparent and could be observed by the carrier at time of acceptance, but the carrier still accepts the shipment for transport.

- g. The carrier fails to provide safe and adequate service, equipment, or facilities for the transport of the property.
- h. The shipper seals the freight and the carrier breaks the seal(s).
 - (1) TL/CL freight. If the carrier breaks the seal(s) en route to the destination, reseals the freight, and then delivers freight short or damaged, the carrier may be held liable.
 - (2) LTL/Less-Than-Carload (LCL) freight. If the carrier breaks the seal(s) at the local terminal or first BB point and discovers shortage/damage, but fails to notify the shipper of discrepancies, the carrier may be held liable.
- i. The carrier fails to properly load, stow, block, or brace a LCL or LTL shipment.

K. COMMON SHIPPER FAULTS

- 1. The carrier may be relieved of responsibility for loss or damage occurring en route when it can be proven that the shipper:
 - a. Failed to ship items described or listed on the BL.
 - b. Failed to package and pack the shipment properly.
 - c. Failed to use suitable containers, e.g., pallets, skids, for shipment.
 - d. Failed to load, stow, block, and brace a CL or TL shipment properly.
 - e. The examples above do not apply if the carrier knew about the improper lading, loading, or similar deficiency or if such were apparent upon ordinary observation. The carrier is not relieved of liability if a deficient shipment is accepted for transport.

L. MEASURE OF LOSS AND DAMAGE - DETERMINING VALUE

- 1. Right to Recover Money. The DOD is entitled to payment for the actual loss of or damage to property. The Government's damages will be measured as determined by principles of law. The exact amount of loss or damage must be documented. Claims for commercial carrier loss or damage to Government property are based on firm evidence and documented facts. The burden is on the Government to prove the loss or damage occurred while the property was in the carrier's possession. Evidence submitted must support both the charge of carrier responsibility and the amount of the Government's loss, including any incidental damage arising from the loss or damage to the property. Incidental damages are those expenses reasonably and necessarily incurred by the Government to restore the property or to mitigate the damages. The actual value of the lost or destroyed property may be at market value at the time of the shipment.
- 2. Property Valuation at "market value". The term "market value" is not always applicable to Government property. Some DOD property is not suitable for commercial or industrial use, and valuable for military purposes only, with no comparable commercial market value. The law provides that the measure of loss or damage to an article having no "market value" is the value of the article to the owner (14 American Jurisprudence, Second Edition. § 631, Carriers).

3. Contracts, purchase orders, and invoices are acceptable proof of value and sometimes apply when an item moves from the manufacturer to the first Government destination. However, these procurement documents are not maintained as a means of determining property value after the purchased items are placed in the federal property system. Price quotations may be obtained from a variety of supply systems, e.g., FED LOG, and become the authority for the value of the lost or damaged item. The price quote is based on the average purchase of like items procured by DLA, DCMA, GSA, or the Service under contract for the same period. These costs are usually less than open market prices due to the volume of purchases.
4. If, for some reason, the value is unknown or there is doubt concerning the pre-shipment value of an item lost or damaged, consult the IM, who determines value based on consideration of original cost, utility and use, condition and age, and extent, if any, to which it has deteriorated or depreciated. If there is a continuing need for a like or similar item, and there are none available in the supply system, the value may be the estimated cost to reproduce or replace the item (including transportation cost) less allowances, for preshipment condition of the property lost or irreparably damaged.
5. Sometimes lost or damaged property has no value other than as scrap. The property may be obsolete or shipped for disposal through the established property disposal channels. If the property has no value other than as scrap, that value will represent the measure of loss.

M. PROPERTY DEPRECIATION

1. Many items of government property, although classified as serviceable (material condition code A), are depreciated in value at time of shipment from one site to another. When “used” property is lost, irreparably damaged, or damaged beyond economical repair, the level of depreciation must always be considered when determining the amount of the Government’s actual loss.
2. For property in “pre-shipment repairable” condition, both depreciation allowance and average standard cost of repair may apply for computation of the actual loss. When there is a continuing need for an item and it must be replaced, the amount of loss is based on the adjusted replacement cost. Obtain it by deducting the depreciation to the used item from the cost of a new like item. For property that will not be replaced, the amount of loss is determined by deducting the depreciation allowance from the original cost or the supply system price quotation under which the property was carried in DOD inventory.
3. Usually, a depreciation rate is based on the service-life expectancy of an item of property. The IM of the class of property will maintain these rates. When a depreciation allowance applies, the TO requests it from the IM. Depreciation allowances based on the technical knowledge of the IM will establish a sound basis for an equitable claim. The statement of depreciation allowance must accompany the TDR, and must show factors considered and the method used to compute the depreciation allowance. The depreciation allowance statement documents the claim against the carrier. The statement will include:
 - a. Date of purchase and manufacturer.
 - b. Original acquisition cost.
 - c. Replacement cost of a like item and source of this quotation.
 - d. Estimated or published life expectancy (if published, give the source).

- e. Preshipment condition.
- f. Current need to the DOD.
- g. Average standard repair cost, when an item was shipped in “reparable” condition.
- h. See **Error! Reference source not found.** for an example of a pre-shipment value statement.

N. REPAIRS AND COSTS

1. As with all elements of damages, the cost of repair (actual or estimated) must be shown to be reasonable.
2. Actual Costs. When damage occurs to DOD property and the damage can be repaired, the damages are measured by the cost of the repair necessary to restore the property to its condition before the injury. The DOD is not entitled to any portion of the repair cost that makes the property more valuable than it was before the injury. If the cargo was shipped with pre-existing damage, a needed repair or for update prior to shipment, that cost is deducted from the actual repair cost. The carrier cannot be charged for a pre-existing condition, only for the damage it caused.
3. Several options exist when repairs are made to the damaged property. Some repair actions follow. The property owner must work with the TO to determine the proper course of action and acquire the necessary funds for repair. The claims office does not furnish the funds for repair. In all instances, the matter will be coordinated with the carrier before repairs are made.
4. Property on Which Repairs Will Be Estimated. It is not necessary to spend money or owe a repair bill to recover the cost of repair (78 American Law Reports [A.L.R.] 905). When repair will not be made, repairs will be delayed due to lack of parts or backlog in the repair facility, or when the damaged property must be shipped to another facility for repair, use the estimated repair costs to settle claims.

O. CARRIER REPAIR OF DAMAGED PROPERTY

1. The carrier may repair damaged property (except classified and protected cargo).

NOTE: Do not release Top Secret, Secret, Confidential, sensitive, or technical supplies or equipment to a carrier for repairs.

When the carrier performs the repairs, the carrier must agree in writing to:

- a. Restore the damaged property to the condition it was in when the Government released it for shipment.
- b. Repair the damaged property to meet military or contract specifications.
- c. Repair the property promptly.
- d. Return the repaired property to the releasing activity or other activity directed to receive it, without undue delay.

- e. TO will obtain a receipt for the property when released to the carrier for repairs. When the above conditions have been met, the TDR will be canceled as no claim against the carrier is warranted.

P. CARRIER REPLACEMENT OF DAMAGED PROPERTY

1. The carrier may elect to replace damaged property at no cost to the Government. When the carrier replaces damaged property, it must agree, in writing to:
 - a. Replace the damaged item with an identical one.
 - b. Replace the damaged item promptly.
 - c. Deliver the replacement item damage-free.
2. The TO will give the damaged item to the carrier for salvage or disposition and cancel the TDR as no claim action is warranted. However, do not release Top Secret, Secret, Confidential, sensitive, or technical supplies or equipment to a carrier.

Q. REPAIR OF DAMAGED PROPERTY

1. When DOD property is damaged in transit and a claim is filed against the carrier, the carrier is entitled to receive an itemized repair cost statement (breakdown) of the actual repair costs relating to the damaged item. The repair cost statement will contain parts, labor, and overhead as separate items.
2. Transportation Charges to Repair Facility. When it is necessary to send damaged property to a repair activity, add the freight transportation cost(s) to and from the repair facility to the TDR. When damaged property is sent to a repair activity, then transshipped, the transportation cost chargeable may not exceed the original transportation charges to the repair activity and back to the original BL destination location. If the item is a replacement, the record must show that a second item was shipped to replace the damaged item. Normally, this charge will not exceed the cost of sending the damaged item to and from the repair facility, provided the replacement is shipped from the facility by the same mode. Transportation charges to and from repair activities must be supported by copies of the BL, carrier's freight bills, and a statement showing that the repair could not have been made locally at less cost by a government facility or a commercial firm.
3. Prevention of Loss of Identity at Repair Facility. Because of the administrative costs involved, repair facilities do not maintain repair cost data for each item repaired. They can, however, provide the actual itemized repair cost data for repair of in transit damages when the reporting activity properly marks the damaged property for shipment to the repair facility and shows that separate repair cost data is needed for freight loss and damage claim action. To prevent loss of the damaged items and their actual repair cost data at the repair facility, the reporting activity must:
 - a. Notify repair facility's transportation personnel and request they alert the IM and maintenance shop or facility of pending shipment of damaged property and the requirement for separate actual repair cost data for claim action against the carrier. Ensure the BL, shipping document, and "reparable" tag attached to the damaged property are all annotated to

show the office responsible for the TDR, file reference number, BL number, and that the actual repair costs to the specific item are required to file a freight loss and damage claim against the carrier.

- b. Ensure the repair facility/maintenance shop is capable of and responsible for providing the actual repair cost statement, when the reporting activity places them on notice that separate actual repair cost data is required.
- c. If the item loses its identity at the place of repair and another is shipped to replace it, include transportation charges for the replacement item on the TDR.

R. REPAIR COSTS CHARGED BY MILITARY FACILITIES WITH A COST ACCOUNTING SYSTEM

In addition to the direct costs of material and labor, Services must include the overhead costs for the claim. Where a cost accounting system is used, the overhead costs provided by that system will be included in the repair cost statement. If the overhead costs are not provided by the cost accounting system, repair costs will be computed using the procedures in the Paragraph S. Figure 211-3 is an example of a repair cost statement.

Repair Costs

Assume a repair job required 40 hours of regular civilian time plus 10 hours overtime. Overtime was authorized because the item was required to support a priority mission. The regular civilian rate is \$15.50 per hour. Military apprentices (E-1) worked 10 hours at the standard rate of \$9.65 per hour plus 32 percent of the total standard rate. Material (itemized) used in the repair work cost the Government \$675.50. Some parts removed were salvaged at the local DRMO. Salvage value is \$52.75.

S. REPAIR COSTS (DIRECT AND INDIRECT) CHARGED BY MILITARY FACILITIES WITHOUT A COST ACCOUNTING SYSTEM

1. Activities that do not have detailed cost accounting data will compute the cost of repair work as follows:
 - a. For repair work performed by civilians, charge the cost of the regular civilian time plus 42.9 percent, which covers the cost of annual leave, sick leave, holidays, and contributions to employee benefit programs.
 - b. Add the direct cost of any civilian overtime to (a) above, but do not add the 42.9 percent to the overtime rate.
 - c. Add the direct cost of work performed by military personnel to subparagraphs a. and b. above. Use the standard daily or hourly rates published in service personnel cost directives. Multiply the number of hours or days worked times the standard rate, plus 32 percent of the total standard rate for enlisted personnel and 20 percent for officers, as prescribed in pertinent Service personnel cost directives. These percentages cover the leave, holidays, and certain other personnel costs not included in the standard rate.
 - d. Increase the sum of subparagraphs a., b., and c. above by 30 percent. This percentage covers costs such as administration, heat, light, and water.

- e. Increase direct material costs by 3.5 percent as prescribed in pertinent service personnel cost directives for accessorial costs (packing, crating, and handling) of material issued from stock for use in repair of damaged items. Add this amount to the sum of subparagraphs a., b., c, and d.
- f. If subassembly items or parts recovered incident to repair of the damaged article are salvaged, the carrier is entitled to the salvage value of those recovered items/parts, less any costs to process the salvage. Subtract the salvage value from the total repair costs.

T. PROPERTY NOT TO BE REPAIRED

- 1. If property will not be repaired, either ship the property to the item or inventory manager for disposal or return the material to storage.
- 2. Receiving TOs will obtain itemized estimates of repair costs as soon as possible. Estimates will be prepared and signed by technically qualified personnel who are familiar with labor costs, parts, and overhead.
- 3. The TO must tell the carrier that:
 - a. The property will not be repaired.
 - b. A technically qualified person computed the estimated cost of repair.
 - c. The claim will be settled based on estimated cost.

U. PROPERTY NOT TO BE IMMEDIATELY REPAIRED

- 1. When repair delays occur, use the estimated repair cost to establish the measure of damage.
- 2. Estimated repair costs are subject to adjustment when the actual repair charges are determined. The TO must obtain and report the actual cost of repairs to the claims office.
- 3. The claims office will inform the carrier that:
 - a. There will be a delay before the property can be repaired.
 - b. A technically qualified person computed the estimated cost of repair.
 - c. The DOD is filing its claim based on the estimate.
 - d. The carrier will settle the claim based on the estimate, subject to adjustment when actual repair is completed.

V. DISPOSITION OR SALVAGE OF DAMAGED PROPERTY

- 1. When a determination is made to salvage the damaged property accepted by the Government, the carrier must be notified of the intent to salvage. If release of the property is not restricted, it may be offered to the carrier. A carrier is entitled to credit for the salvage value of property not

released to it. Such credit does not apply if the recoverable amount of the shipment claim under released valuation is less than the Government's actual loss.

2. When articles are damaged to the point they must be scrapped, the carrier must be allowed credit for the value of the scrap recovered. Deduct the cost of processing the salvage for sale from the salvage value.
3. The policies for disposal or salvage of carrier-damaged property are contained in transportation, materiel, and security directives. Field activities must arrange to dispose of carrier-damaged property according to their Service directives for handling unserviceable property. The claims office does not furnish disposition instructions or funds for disposition.

W. DISPOSITION OF CARRIER-DAMAGED PROPERTY MOVING UNDER RELEASED RATES

A carrier's liability for loss or damage to Government property may be limited to the released valuation cited in the carrier's tender or schedule of rates and on the BL. When the BL cites "released valuation," field activities must not release damaged property to carriers for salvage when the released valuation or amount recoverable from the carrier is less than the actual property value.

X. DISPOSITION OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES

1. Damage to explosives and other dangerous articles, especially where damage cannot be readily noted, present a special situation. Rough handling may require destruction of the entire shipment even though damage to every item may not be visible. Do not give explosives or other dangerous articles to the carrier for salvage.
2. Supporting documentation for these special situations consists of:
 - a. A statement that the carrier had the opportunity to reinspect the commodity before its destruction. This does not apply to classified material.
 - b. Evidence (photographs, statements, etc.) showing in detail how the commodity was prepared for shipment (blocked, braced, etc.).
 - c. A statement from technically qualified personnel and supporting evidence, e.g., technical orders, showing destruction is required.
 - d. A statement that the carrier was aware of:
 - (1) The nature of the commodity transported.
 - (2) The possibility the Government might have to destroy the entire shipment after delivery if the commodity was handled roughly.
 - (3) The basis for determining that the commodities were handled roughly.
 - e. Obtain the carrier's written agreement to the destruction of the commodity or attach a statement that an agreement could not be obtained. Installation commanders, TOs, or freight claim personnel will determine the necessity for such a statement or agreement.

Y. DOCUMENTATION REQUIREMENTS

Detailed instructions on proper completion of the TDR are contained in Appendix I. The DOD objective is prompt, equitable settlement of transportation claims. It is imperative the TDR be a comprehensive report of transportation-type discrepancies in shipments of Government property and be supported by documents which establish carrier responsibility. The TO must use logic and sound judgment in determining documents required to support the TDR, since the TO is the primary source of information for the claims office. The TO must document each TDR, based on its own merits, keeping in mind that the claims office requires factual information and documented evidence to determine liability, establish the measure of loss or damage, and file an equitable claim against the carrier. See Chapter 210, Paragraph F, for the minimum supporting documentation needed for TDR submission.

Z. DISTRIBUTION OF THE TDR FOR CLAIM ACTION

The reporting activity must maintain a copy of all TDRs and supporting documents for future reference. Documents will be maintained and disposed of IAW Service/Agency file retention guidelines. Chapter 210, Paragraph I.3, furnishes distribution guidance.

AA. RESPONSIBILITY FOR REPORTING TDR CORRECTIVE ACTIONS AND CARRIER PROTESTS TO THE CLAIMS OFFICE

1. See Chapter 210 for guidelines on correcting, amending, or canceling a TDR.
2. Freight Loss and Damage Claims Reopened. Claims filed by the claims office may be reopened by the carrier, reporting activity, shipper, claims personnel, or by direction of higher authority. Claims personnel must review the protest or evidence that reopens the claim, and determine whether to reinvestigate, amend, sustain, or withdraw the claim. If necessary, claims personnel may request that the reporting activity reinvestigate the discrepancy. When the claims office sends a request to the TO for further investigation, the TO must furnish the requested evidence to claims personnel.
3. Carrier Protests. Claims personnel are required to answer carrier requests for documents or reconsideration of the claim. Activities receiving misdirected inquiries must promptly forward them to the claim office and advise the carrier of the referral. TOs are encouraged to cooperate with carriers to resolve issues locally. However, TOs must refrain from making comments or commitments to carrier agents concerning liability or amount charged for loss or damage.

BB. FEDERAL CLAIMS COLLECTION ACT OF 1966 (PUBLIC LAW 89-508, 80 STATUTE 308) AND AMENDMENT AS GENERATED BY DEBT COLLECTION ACT OF 1982 (PUBLIC LAW 97-365, 25 OCT 1982)

The revision generated by the Debt Collection Act of 1982 prescribes standards for administrative collection action, and referral of claims to the General Accounting Office or the Department of Justice for litigation. TOs receiving inquiries from carriers concerning compromise, litigation, suspension, or termination of collection actions must immediately forward them to the claim office for processing.

Local Claim Filing Guidelines

1. These are the minimum basic requirements for filing a loss or damage claim against a commercial carrier. These procedures supplement the procedures in Chapter 210 for completing and submitting a TDR package to the finance center/claims office. These local claim-filing procedures must be followed after the TDR investigation is complete. Refer to Paragraphs 5 and 6 below for guidance.
2. By law, the claim must be proven with documented evidence that proves all three points below:
 - a. Shipment was given to the carrier in good condition.
 - b. Shipment was delivered in lesser condition or quantity than when tendered to the carrier.
 - c. The amount of the loss.
3. The carrier can relieve itself of liability by showing evidence that one of the following exceptions apply and that the carrier was not negligent. The exceptions are the act of God, act of the public enemy, act or mandate of public authority, act or fault of the shipper, and/or defects in or inherent vice of property. See Paragraph G, for a more detailed explanation of these exceptions.
4. To properly file a shortage or damage claim against a carrier, refer to Chapter 210, Paragraph F.2.h. for the minimum supporting documentation needed. To determine the actual value of the Government's loss, refer to Paragraphs L through W. These paragraphs discuss the measure of damage, replacement or repair issues, and salvage. Become familiar with these basic concepts to effectively file a valid freight loss and damage claim against a carrier.
5. Claims for loss or damage must be filed within a certain amount of time. The time limitation is based on the mode of transportation used. Consult the chart in Chapter 210, Paragraph D.3 for the basic claim filing time limits. The time limit is greatly reduced when an air or small package carrier moved the shipment.
6. Once the investigation is complete and all evidence has been gathered, reviewed and documented, file a formal claim against the carrier. The TO may:
 - a. Use the carrier's own claim form(s). To obtain the form(s), contact the carrier's local terminal. Inform the carrier of the need to file a freight loss and/or damage claim and request they mail or fax their form(s).
 - b. Prepare a SF 362. (See Figure 210-2) This form can be accessed at <http://hydra.gsa.gov/forms/>. This website has a fill-in on the screen (FormNet Fill) version of the SF 362 along with blank version (PDF view) that can be printed and completed with a typewriter.
 - c. Regardless of the form used, prepare a cover letter to the carrier advising that a freight loss and/or damage claim is being submitted. This letter will instruct the carrier where to send the claim payment check. (Note: Small package carriers generally send the claim check to the shipper only.) Provide the carrier with a copy of all supporting documentation, including photographs and the SF 361 (front side only), in the claim package. Submit the claim package by a traceable means to the carrier's home office, not its local terminal.
7. Some carriers permit filing claims online. If this option is available, comply with all instructions provided by the carrier for supporting documentation. Consult with the carrier's local terminal if problems are encountered.
8. The carrier must acknowledge the claim within 30 days. Follow up with the carrier after 60 days. The carrier has 120 days to pay, protest, or deny the claim. If there are any problems or concerns, or no response is received from the carrier, then forward the TDR and supporting documents along with a copy of the claim package to the service or agency finance center/claims office. Advice or assistance may be requested at any time from claims office personnel to resolve the claim.

Figure 211-1. Local Claim Filing Guidelines

<u>VALUE STATEMENT</u>	
Item:	Clock TD 1251/U
NSN:	6645-01-063-0399EX
Requisition Number:	FB2930-0075-0742
Bill of Lading Number:	D0692473, 03/04/01
Date Purchased	1992
Manufacturer	Ace Industries, Inc.
Original Acquisition Cost	\$81,314.18
Replacement Cost 2001	\$107,900.50
Life Expectancy	20 yrs (published in [give source])
Pre-shipment Condition	Repairable
Current Need to DOD	Required
Standard Repair Cost 2001	\$4,596.00
<u>Computation</u>	
Replacement Cost	\$107,900.50
Depreciation	
9 yrs @ \$5,395.03 per yr	- 48,555.27
Value after depreciation	59,345.23
Standard repair cost 2001	- 4,596.00
Pre-shipment value	\$ 70,934.32
Date	_____
	[Name of Technically Qualified Person}
	[Title]
	[Location}

Figure 211-2. Example of Pre-Shipment Value Statement

<u>REPAIR COST STATEMENT</u>	
Item: Aircraft Leading Edge	
Value: \$49,750.00	
Civilian labor 40 hours @\$15.50/hour	\$ 620.00
Civilian indirect labor costs	
42.9% of civilian labor cost.....	265.98
Civilian overtime 10 hours @ \$23.25/hour	232.50
Military labor 10 hours @ \$9.65/hour	96.50
Military indirect labor costs	
32% of military labor cost	30.88
Total Labor Cost.....	\$1,245.86
Overhead	
30% of total labor cost.....	373.76
Direct material cost (must be itemized)	675.50
Accessorial Cost	
3.5% of direct material cost.....	23.64
Salvage value of parts removed.....	(52.75)
Total Repair Cost	\$2,266.01
Date	_____
	[Name of Technically Qualified Person}
	[Title]
	[Location}

Figure 211-3. Example of Repair Costs (Direct and Indirect) by a Military Facility Without a Cost Accounting System

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